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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,134	12/18/2001	Steven Ausnit	ITW-13115	4729

23566 7590 12/17/2003

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EXAMINER

MEREK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/023,134

Applicant(s)

AUSNIT, STEVEN

Examiner

Joseph C. Merek

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 9, 10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9, 10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 9, 10, and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Machacek et al in view of Ausnit (US 4,892,414). Regarding claim 1, Machacek et al teaches a zipper bag with a slider where the slider does not have a separating finger but does not teach the membrane of a gauge thin enough to be captured between the male and female members when the zipper is closed and does not teach the membrane being connected to and extending between the male and female members. Ausnit '414, as seen in Figs. 6, 14, and 19, teaches a membrane that is thin enough to be interengageable between the male and female profiles. It would have been obvious to employ the membrane of Ausnit in the bag of Machacek et al to provide for the tamper evident or tamper discouraging feature or the liquid tight seal of Ausnit '414. As seen in Fig. 14 of Ausnit '414 the membrane is connected to the male and female members. Regarding claim 2, see Fig. 14 of Ausnit '414, where the membrane extends from the top of the one member to the top of the other member. The top is a matter of orientation and the location where the membrane is attached is the top. Regarding claim 3, see Fig. 19 of Ausnit '414, where the membrane extends

Art Unit: 3727

from the top of one member to the bottom of the other member. Regarding claim 4, see Figs. 1-7 of Machacek et al, where the fastener as claimed is attached to the mouth. Regarding claim 7, see Figs. 1-7 of Machacek et al, where the modified receptacle of Machacek et al the has a mouth at an upper end with a closed plastic zipper 10 attached to the mouth, and a slider 42 is mounted to the zipper, where 14 and 18 are the first and second interlocked profile structures having an interstice therebetween, the slider does not have a separating finger for separating the first and second profiled structures. See Figs. 7, where the pliable membrane is secured to the first interlocked structure and part of the membrane being located in and having a profile conformed to the interstice. The modified receptacle of Machacek et al has an interstice that will receive the membrane as seen in Fig. 7 of Ausnit '414. Regarding claim 9, see Col. 3, lines 40 and 41 and Fig. 2 of Machacek et al, where the bag 86 is sealable to the base extensions or flanges 28 and 30 and the flanges or extensions are secured to the profiled structures. The bag walls are secured to the flanges as claimed. Regarding claim 10, see Col. 3, lines 22-25, where the first profile structure 12 has a male profile and the second profile structure 14 has a female profile. Regarding claim 12, see the discussion of claims 7-10 above and Fig. 14 of Ausnit '414 where the membrane is secure to both male and female profiles. Regarding claim 13, see Fig. 14 of Ausnit '414 where the membrane is folded. Regarding claim 14, see Fig. 19 of Ausnit '414, where the membrane is secured to the first and second profiled structures at different elevations. Regarding claim 15, see the discussion of claim 7 above. Regarding claim 16, see the discussion of claim 13 above. Regarding claim 17, see the discussion of

claim 14 above. Regarding claim 18, see Fig. 16 of Ausnit '414 where the free edge is shown.

### ***Response to Arguments***

Applicant's arguments filed 9/29/03 have been fully considered but they are not persuasive. The reason that Ausnit has the membrane in between the profiles is to provide a tamper evident seal. It would have been obvious to employ this membrane in the zipper of Machacek et al to provide the tamper evident feature. The membrane of Ausnit is designed to work with the profiled members and is thin enough to work with the zipper of Machacek et al.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

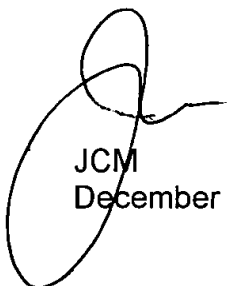
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3727

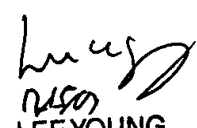
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



JCM  
December 14, 2003



LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700